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MONGOLIA RULE OF LAW PROJECT

Towards an Independent Judicial System in a Democratic Mongolia

(A Report Sponsored by the US Agency for International Development)

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HISTORY OF PROJECT

Following the conclusion of a successful three-day Strategic Planning conference held in Ulaan Baatar by the National Center for State Courts on July 27-29, 1999, the participants at the conference and other representatives of the Mongolian justice system created three Working Groups and an Advisory Committee to begin developing a Strategic Plan for the Justice System of Mongolia. The Strategic Plan would be based on the six fundamental values identified by the participants at the conference as follows: Independence, Responsiveness, Accountability, Fairness, Effectiveness, and Accessibility.

RULE OF LAW CONSULTANT'S WORK

The Rule of Law consultant under contract with the National Center for State Courts, worked in Mongolia during three month-long trips from November 1999 through March 2000¹ to assist the three Working Groups and the Advisory Committee in their development of the Strategic Plan and thereafter with a Ministry of Justice working group to develop an Action Plan and an accompanying budget.

MAJOR MEETINGS CONCERNING THE STRATEGIC PLAN (in chronological order)

First Advisory Committee Workshop on November 20, 1999

The first priority was to prepare the members of the Advisory Committee for a one-day Workshop scheduled for November 20, 1999. In order to provide each member of the Advisory Committee with sufficient information regarding the nature of the strategic planning process, and to prepare them for their role as Advisory Committee members, the team met individually with each member of the Advisory Committee prior to the Workshop. During the meeting with the Minister of Justice D. Ganbold, we were informed that the Strategic Plan was to be completed by January 31, 2000.

The Advisory Committee Workshop was held at the Ikh Tenger complex on November 20, 1999 with eleven (11) members of the Advisory Committee attending. (See attachment A). The goal of the Workshop was to discuss each of the six values developed at the July conference and determine the principles of judicial reform relating to each of the values.

The Workshop produced results greater than anticipated. The participants were attentive throughout the day and provided a thoughtful and thorough analysis of the justice system and its problems. (Attachment B- Issues Considered by the Advisory Committee) The workshop was facilitated by Enkhchuluun, Secretary of the General Council of Courts. He kept the discussion on point and used flip charts to record significant comments. (Attachment C - Minutes of Workshop.)

By the end of the Workshop, the participants had developed a list of strategic principles for each of the six values. (Attachment D - List of Strategic Principles) Upon review, it was noted that some of the principles were written as tasks, while many other principles discussed at the Workshop were overlooked. A Memorandum was drafted from the notes taken at the Workshop, in the format of a Strategic Plan, categorizing the participants' comments as strategic principles

¹ November - December, 99, January - February, 2000, March, 2000

and tasks. A copy of the Memorandum was distributed to each member. (Attachment E - Memorandum)

Working Group Meetings in November and December, 1999

Following the Advisory Committee Workshop, it was anticipated that the three Working Groups would meet regularly, perhaps once weekly, given the time constraints of meeting the Justice Minister's deadline of January 31, 2000. The output of each of the three Working Groups was to be consolidated into one document and presented to the Advisory Committee for consideration.

1. Legal Environment and Structure Working Group

As Chairman of the Legal Environment and Structure working group, Bayasgalan (then Director of the Legal Reform Strategy Management and Integrated Planning Department of the Ministry of Justice) scheduled a meeting of his Working Group during the first week following the Advisory Committee Workshop. Attendance at this meeting was low. Many members of the Working Group, including Bayasgalan, believed they had substantially completed their work on the Strategic Plan in that they had reviewed the ten draft laws relating to the justice system and had provided suggestions for amendments. It was felt that their suggestions on the ten draft laws could also be considered tasks for the Strategic Plan.

2. Ethics and Human Resources Working Group

As Chairman of the Ethics and Human Resources working group, Chief Justice of the Supreme Court Ganbat scheduled a meeting at which attendance was high. The Chief Justice prepared a list of work assignments to be performed by the members of the Working Group, and distributed it among the members. The members were not familiar with the purpose of the meeting, strategic planning process, and were not clear regarding their responsibilities as Working Group members. The next meeting of the Ethics and Human Resources Working Group scheduled for December 1 was unsuccessful due to poor attendance, however, two members of the Working Group, Damdin-Od and Atartsetseg, both Capital City Court judges, provided written proposals for inclusion in the Strategic Plan.

3. Organization and Management Working Group

The Working group met on December 3 and was well attended. This was the second meeting, having met once before in the Fall. The meeting, chaired by Enkhchuluun, at which he presented the purpose of the strategic planning process, referring to the various documents which had been previously distributed to all members of the Working Group, the members engaged in positive discussion of judicial reforms. Enkhchuluun requested that members of the Working Group present their written suggestions by the first week in December for consideration by the Advisory Committee.

Donor Meeting on December 6, 1999

Ambassador La Porta and Ed Birgells, USAID Mission Chief, hosted a meeting on December 6, 1999 of international donors and embassies to present USAID's Rule of Law Program and to specifically discuss the strategic planning process. (Attachment F - Agenda.) One of the primary reasons for this meeting was to assuage the concerns of other foreign donors who apparently

believed that if the U.S. enters the already-crowded arena of legal and judicial reforms, it will duplicate and ultimately dominate the other assistance providers in Mongolia. There were over 34 individuals at the meeting. (Attachment G - Attendees)

Second Advisory Committee Workshop on January 22, 2000

The Second Workshop of the Advisory Committee took place at the Ikh Tenger complex on January 22, 2000. Representatives of the Ministry of Justice, General Council of Courts, General Prosecutor, Mongolian Advocats Association, Court Decision Enforcement Agency, the Parliament and President were present at the Workshop. The Courts (Supreme Court and lower courts) and Police were not represented, after the first hour of the Workshop the Mongolian Advocats Association representative left the meeting. The Minister of Justice opened the Workshop by expressing his view that it would be the last meeting of the Advisory Committee for he anticipated that the participants at the Workshop would agree on a final Strategic Plan in order to meet the January 31, 2000.

All participants at the Workshop were given the Third Draft of the Strategic Plan (see discussion below regarding the various Drafts of the Strategic Plan) and were asked to respond to each of the principles listed and to present suggested revisions. A representative of the General Council of Courts incorporated the suggested revisions into the Fourth Draft of the Strategic Plan. (Attachment H - Minutes of the Workshop)

DRAFTS OF THE STRATEGIC PLAN

First Draft of the Strategic Plan

The First Draft of the Strategic Plan was completed during the first week of December. Apparently, Enkhchuluun wrote the First Draft with little, if any, input from the three Working Groups. Enkhchuluun had anticipated receiving numerous proposals from the Working Groups, but when few were forthcoming, he proceeded on his own as he was mandated by Otgonbayar, Chair of the Standing Committee on Legal Affairs of the Parliament and Chair of the Advisory Committee, to complete the First Draft by December 13. Since the three Working Groups failed to produce the anticipated results, Otgonbayar formed a new Working Group representing all five agencies.

Second Draft of the Strategic Plan

On December 22, 1999, the new Working Group had its first and only meeting. The group consisted of Otgonbayar, Enkhchuluun and Ganbayar, Advisor to the Minister of Justice. The Second Draft of the Strategic Plan, prepared by Enkhchuluun and Bayasgalan, was reviewed at the meeting. Since Ganbat had yet to provide any comments for the Second Draft, the new Working Group decided that any future Drafts must include Ganbat's input on behalf of the courts. The Second Draft was distributed to all members of the Advisory Committee. Responding to a request of the Advisory Committee, USAID and the National Center for State Courts provided written comments on the Second Draft.

Following the meeting, Enkhchuluun was removed from his position, effective December 31, 1999, and was replaced by Ganbayar who previously had only minor involvement in the Strategic Planning process.

Third Draft of the Strategic Plan

The Third Draft reflected many of the comments and suggestions presented by the Ministry of Justice, Chief Justice of the Supreme Court, the General Prosecutor, Chief of Police, the Court Decision Enforcement Agency and numerous suggestions presented by USAID and the National Center for State Courts. The Mongolian Advocats Association declined to provide written or oral comments to the Drafts of the Strategic Plan. The Third Draft was presented to the Advisory Committee at its workshop on January 22, 2000 and was the basis for discussion.

Fourth Draft of the Strategic Plan

Following the Advisory Committee Workshop on January 22, 2000 a Fourth Draft of the Strategic Plan was prepared. The Minister of Justice and Ganbayar, expressed that the Fourth Draft was the final draft and was to be submitted to the Legal Standing Committee for approval.

Fifth Draft of the Strategic Plan

During the week following the Second Advisory Committee Workshop, the USAID/NCSC team provided a line by line review of the Fourth Draft and suggested numerous revisions, most of which were technical and focused on a reorganization of the Fourth Draft. The USAID/NCSC team presented all of these suggested revisions and questions in the form of a Fifth Draft to Bayasgalan who was appointed by the Minister of Justice to represent the Advisory Committee. Bayasgalan promised to distribute the Fifth Draft to the Advisory Committee.

Sixth (Final) Draft of the Strategic Plan

At a meeting with Ganbayar in late January, the team was presented with the Sixth Draft, which incorporated most of the revisions suggested in the Fifth Draft while also including revisions suggested by other individuals. The Sixth Draft was considered by the Minister of Justice to be the final Draft. The Sixth (Final) Draft was unofficially translated into English and presented to Parliament at its Spring Session. (Attachment I - Sixth (Final) Draft of the Strategic Plan)

Action Plan

At two meetings between Mr. Ed Birgells and the Minister of Justice in mid-February, it was decided that a budget supporting the Strategic Plan, and an Action Plan identifying priorities and tasks should be prepared for the dual purpose of presenting the Strategic Plan and the budget to the Parliament for approval, and for developing an Action Plan which would enable USAID to describe the objectives and results desired in Mongolia. The Action Plan would cover four years; the first two years, 2000-2001, to be presented in detail and the later two years, 2002-2003, in more general terms.

Bayasgalan was appointed as the Minister's representative to organize a small group of individuals representing the justice system agencies to develop the Action Plan. In a meeting with Bayasgalan and Tsogt, the team was presented with a list of Priorities of Tasks (Attachment J - Priorities of Tasks). Four local budget specialists were engaged by USAID to work with Bayasgalan and Tsogt in developing the Action Plan and budget. Beginning March 13, a working group consisting of the Bayasgalan and Tsogt, representatives of the General Council of Courts, and four budget experts worked to develop the Action Plan and budget. Each draft of the Action Plan produced by the working group was reviewed by a working team consisting of Ann

LaPorta, Jan Stromsem, Larry Dolan, Heike Gramckow, Madeleine Crohn and Mary Noel Pepys. (Attachment K - Compilation of USAID/NCSC Comments on the Action Plan)

By March 24, 2000 the Action Plan and accompanying budget were completed, accepted, and approved by the Minister of Justice for submission to the Cabinet. (Attachment L - Action Plan, Attachment M - Budget, and Attachment N - Foreign Donor Projects).

APPROVAL PROCESS OF THE STRATEGIC PLAN, ACTION PLAN AND ACCOMPANYING BUDGET

Throughout the strategic planning process there was continual discussion concerning the approval process of the Strategic Plan and a difference of opinion emerged. The Minister of Justice, Ganbayar and Otgonbayar were of the opinion that parliamentary committee approval of the Strategic Plan was sufficient, and legal. Enebish, Secretary General of the State Ikh Hural, expressed an opposing view, stating that the Parliament must approve the Strategic Plan. (Attachment O - Memorandum regarding the Approval Procedure.)

Approval by the Legal Standing Committee of the State Ikh Hural

The Strategic Plan was presented to the Legal Standing Committee. Lacking a quorum, the meeting was cancelled. Otgonbayar and/or her representative met individually with each member of the Committee, presented and discussed the Strategic Plan (presumably the Fourth Draft) and received unanimous approval. A Resolution by the Legal Standing Committee approving the Strategic Plan, dated February 4, 2000, contains two short paragraphs, the second of which states that the Minister of Justice has the responsibility to implement the Plan with the assistance of foreign donors. (Attachment P - Decree of Legal Standing Committee) Although the Justice Minister expressed that the Legal Standing Committee had sufficient authority to approve the Strategic Plan, he expressed willingness to seek approval from the State Ikh Hural of the Strategic Plan.

Approval by the State Ikh Hural

The Sixth (Final) Draft of the Strategic Plan and the Action Plan with accompanying budget were reviewed by the Cabinet on April 5 and submitted to the Parliament for consideration. As of Saturday, April 22, 2000, the Parliament had not yet considered the Strategic Plan and budget.

PUBLICIZING THE STRATEGIC PLAN

Meetings with Judges and Prosecutors in the Countryside

After the First Advisory Committee Workshop, Enkhchuluun scheduled meetings with judges, prosecutors and attorneys in Tuv Aimag and at the Kharkhorin Intersoum Soum to explore local problems and to present the work on the Strategic Planning process. Since most of the attention had been given to the justice officials in Ulaan Baatar, Enkhchuluun wanted local judges and prosecutors to be consulted. By providing local judges and prosecutors with the same documents provided to the Working Groups, a broader exposure to the Strategic Planning process in conjunction with input from local officials who are closer to the major judicial problems in the country was achieved.

Annual Meeting of Chief Judges on the Sixth (Final) Draft of the Strategic Plan

After the Sixth (Final) Draft of the Strategic Plan was approved, a meeting with the Chief Judges in Ulaan Baatar was held at the end of their annual meeting in February to discuss the Strategic Plan. The meeting was productive and the team was able to clearly ascertain the concerns of judges throughout the country, while at the same time discuss the purpose and content of the Strategic Plan.

Country-wide Distribution of the Sixth (Final) Draft of the Strategic Plan

The Minister of Justice in one of his February meetings with Mr. Birgells stated that the Ministry has done a good job in disseminating the Strategic Plan. The Minister said that not only was the Strategic Plan published in an official governmental journal, it had been distributed to all the chief judges in the country, all legal agencies, all members of the Advisory Committee and discussed in meetings with the Prime Minister and leaders of the political parties. The Minister also mentioned that plans were underway for a press conference along with Otgonbayar to publicize the Plan.

COMPARING THE CONSISTENCY OF THE STRATEGIC PLAN WITH CERTAIN DRAFT LAWS

Given that several draft laws relating to legal and judicial reform matters are before the Parliament, it is apparent that a comparison of certain draft laws with the Strategic Plan must be undertaken, particularly since USAID intends to invest sizable funding in a program based on the Strategic Plan. A comparison of the Strategic Plan with the appropriate draft laws was made and the results indicate that there were numerous inconsistencies. (Attachment Q - Report of Inconsistencies)

CONCLUSION

The Strategic Planning process appears to have been successful. In less than one year, the Government of Mongolia, including the State Ikh Hural, the President, the Ministry of Justice, the Supreme Court and lower courts, General Prosecutor, Police, Court Decision Enforcement Agency and the Mongolian Advocats Association all supported and participated in developing the Strategic Plan, Action Plan and accompanying budget. The Mongolian justice officials involved in the strategic planning process were genuinely interested in enhancing the level of judicial independence in Mongolia.

USAID and the National Center for State Courts provided significant technical support to Mongolian justice officials enabling them to engage in the Strategic Planning process. Representatives of USAID and the National Center for State Courts worked well together and provided a cohesive team effort to educate and advise the Mongolian justice officials in each stage of the process.

The Advisory Committee, consisting of the major decision-makers within the justice system, were earnest and believed in the necessity of a Strategic Plan. The two Advisory Committee Workshops were excellent illustrations of the Advisory Committee's understanding of and dedication to the process. Much of the success of the Advisory Committee was due in part to the hour-long introductory meetings with each member of the Advisory Committee prior to the first Workshop. Because the members were well-informed of the nature of the Strategic Planning

process and their responsibilities in drafting the Strategic Plan, the Advisory Committee members who participated in each Workshop were able to engage in thoughtful and serious suggestions concerning the legal issues confronting an emerging democracy.

The First Advisory Committee Workshop was well received with active involvement by the members. It was expected that the three Working Groups would be equally productive. The Working Groups, however, failed. The major reason for a dissembling of the Working Groups after the First Advisory Committee Workshop was that the members of the Working Groups did not fully understand the nature of a Strategic Plan, nor did they have the authority needed to seriously engage in the process.

The chairmen of the three Working Groups were chosen due to their positions of leadership and their participation in the three-day Strategic Planning Conference in July. Of the three chairmen, only Enkhchuluun received valuable input from the Working Group Members. As the lack of responsiveness of the Working Groups grew, it was incumbent upon the Advisory Committee, particularly the Minister of Justice, to mandate that each Working Group fulfill its obligations. The Minister of Justice had imposed a deadline of January 31, 2000 and assured us that he had sufficient authority to require members of the Working Groups to devote time and attention to the process in order to meet the deadline. Immediately following the First Advisory Committee Workshop, the Justice Minister left the country and did not return until mid-December. Thus, he was not in a position to compel the three Working Groups to fulfill their obligations. Despite Otgonbayar's promise that the new Working Group formed in mid-December would meet regularly, the new Working Group met only once. The result being that few individuals engaged in the process of drafting the Strategic Plan.

The debate over the approval process of the Strategic Plan was a direct reflection of the seriousness with which certain justice officials viewed the Strategic Plan and its purpose. It appeared that Ganbayar did not understand nor appreciate the value of the Strategic Plan. His rush for approval of the Strategic Plan, which was supported by Ganbayar and Otgonbayar, seemed to be pursued primarily for the purpose of obtaining U.S. funding as soon as possible. The Resolution approved by the Legal Standing Committee clearly stated that intention.

Despite the fact that there was not wide-spread involvement at the working level of each agency nor throughout the countryside in the actual drafting of the Strategic Plan, and that for some individuals the strategic planning process was a means to a lucrative end, the Mongolian justice officials have a document they are very proud of and one that has received bipartisan support.

The Government of Mongolia will continue to support the Strategic Planning process once the State Ikh Hural approves the Strategic Plan. The Mongolian justice officials are proud of the Strategic Plan, Action Plan and accompanying budget, yet there is need for improvement, a need to refine the documents as circumstances change and new information is gathered. Although great efforts were made to engage a diverse group of individuals in the strategic planning process, few officials actually participated. Obtaining input from the working level of the five agencies in Ulaan Baatar and the countryside would be an invaluable benefit to having a Strategic Plan that is accepted and respected by all whose professions are influenced by it and whose future depends upon it.